

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

v.

DONALD TRUMP, in his official capacity as
President of the United States; *et al.*,

Defendants.

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DECLARATION OF JACQUES JIHA

Pursuant to 28 U.S.C. § 1746(2), I, Jacques Jiha, hereby declare as follows:

1. I am the Director of the New York City Mayor’s Office of Management and Budget (“OMB”). I respectfully submit this Declaration in support of Plaintiff’s motion for a Preliminary Injunction and Temporary Restraining Order in the above-captioned action. I make this declaration in my capacity as OMB Director in consultation with my staff, based on my personal knowledge and observations, conversations with OMB staff and other officials of the city of New York (“City”), and review of documents provided to me. I respectfully submit this Declaration in order to place before the Court certain testimony and documents relevant to the relief requested. I am familiar with the matters set forth herein.

2. OMB is the Mayor’s primary advisory group on fiscal issues and is also responsible for the preparation, monitoring and control of the City’s Budgets and four-year financial plans which encompass the City’s revenue, expenditure, cash flow and capital

projections.

3. OMB's FEMA Disaster Recovery & Homeland Security Grants Task Force manages and monitors the administration of Federal funding from the US Department of Homeland Security and the Federal Emergency Management Agency ("FEMA"). The funding is tied to federally-declared disasters and the asylum seeker crisis, as well as to the Homeland Security Grant Program.

4. Most relevant here, OMB is the City's grant administrator for two grants that the federal government, acting through FEMA, awarded to the City for federal fiscal years 2023 and 2024 ("FY23" and "FY24") as part of FEMA's Shelter and Services Program ("SSP").

NOTICES OF FUNDING OPPORTUNITY

5. FEMA solicited SSP grant applications for FY23 and FY24 by Notice of Funding Opportunity ("NOFO").

6. FEMA issued a NOFO for FY23 SSP grant applications on or about June 12, 2023. The NOFO for FY23 SSP grants ("SSP23 NOFO") is annexed as Exhibit 1.

7. The SSP23 Grant is congressionally-authorized under the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Division F – Department of Homeland Security Appropriations Act, 2023, Title II Security, Enforcement, and Investigations, U.S. Customs and Border Protection, Operations and Support and Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, Division F – Department of Homeland Security Appropriations Act, 2023, Title III Protection, Preparedness, Response, and Recovery, Federal Emergency Management Agency, Federal Assistance.

8. On April 12, 2024, FEMA issued two Notices of Funding Opportunity ("NOFO") for localities to apply for SSP funding for FY24 ("SSP24 Grants"). One NOFO announced an

allocation grant, meaning that the amounts the City and other localities could apply for were pre-determined on an allocation basis (“SSP-A Grant”). The other NOFO announced a competitive grant – that is, the City’s application would compete with others for an award from a limited set of funds (“SSP-C Grant”). The NOFOs for the FY24 SSP-A and SSP-C grants (“SSP-A NOFO” and “SSP-C NOFO”) are annexed (as later amended by FEMA) as Exhibits 2 and 3 respectively.

9. Both SSP24 grants are congressionally-authorized by the Department of Homeland Security Appropriations Act, 2024, Pub. L. No. 118-47, Title II Security, Enforcement, and Investigations, U.S. Customs and Border Protection, Operations and Support. The grants have an expected period of performance of 36 months, from October 1, 2023 to September 30, 2026.

10. As set forth identically in all three NOFOs, the goals of SSP grants are:

- To provide funding to non-federal entities that serve noncitizen migrants recently released from DHS custody to temporarily provide shelter, food, transportation, acute medical care, personal hygiene supplies, and labor necessary to provide these services; and
- To provide funding to non-federal entities to increase their capacity to temporarily shelter noncitizen migrants recently released from DHS custody, including renovations and modifications to existing facilities.

SSP23 NOFO at 6; SSP-A NOFO at 6, SSP-C NOFO at 6.

11. In the NOFOs, FEMA expressed that its priority is “the safe, orderly, and humane release of noncitizen migrants from DHS short term holding facilities.”

SSP23 NOFO at 6; SSP-A NOFO at 6, SSP-C NOFO at 6.

12. Once a grant is awarded, the grantee must obtain FEMA’s approval of a grant budget – the line items of expected costs in SSP-allowable spending categories for which reimbursement will be made – and following budget approval, the grantee may submit a documented request for reimbursement for approved expenditures that have already been made.

13. As described in further detail below, there are effectively three major steps in the course of applying for and receiving reimbursement under the grants: (i) grant application and award by FEMA; (ii) FEMA's review and approval of the grant budget; and (iii) FEMA's review of a reimbursement request and supporting documentation and subsequent approval of reimbursement.

14. As part of the SSP application process, potential grantees must submit budget information, standard assurances, and worksheets, with program-specific certifications and budget instructions. SSP23 NOFO at 20-22; SSP-A NOFO at 28-29; SSP-C NOFO at 18-19. The NOFOs also require applicants to agree to the terms and conditions of the award. SSP23 NOFO at 14; SSP-A NOFO at 11; SSP-C NOFO at 11.

15. To draw down funds, grantees must obtain FEMA's approval of the grant budget and then must submit additional information and documentation, including "[a] summary list reporting A[lien]-Numbers, names, corresponding DHS release dates of the served population, and corresponding service dates of the served population." "For each requested allowable activity service category [] provide one example of proof of payment (e.g., canceled check, credit card statement, etc.) and a receipt reflecting the purchase." Additional documentation requirements applied to purchases above \$5,000. SSP-A NOFO at 29; SSP-C NOFO at 19.

16. It should be further noted that the grants only provide for reimbursement for shelter and services provided to migrants who the United States Department of Homeland Security ("DHS") determined to release from its custody into the United States. For that reason, grantees must submit a valid DHS-issued Alien Registration Number, or "A-Number," for every person for whom the grantee seeks reimbursement for shelter and services provided. Following a review of the submitted documentation, FEMA may deny a portion of the payment request if

there is an error rate in matching the submitted A-Numbers to DHS records.

17. FEMA provides an electronic platform called FEMA GO, which stands for FEMA Grant Outcomes. FEMA GO is the platform through which grant applicants and grant recipients submit required materials in the course of grant application and administration. Notices from FEMA are likewise provided to grant recipients through FEMA GO.

The SSP23 Grant Award and Reimbursements

18. The City applied for the SSP23 Grant on July 12, 2023. FEMA initially awarded the City a grant of \$104.7 million by notice effective August 11, 2023, which it increased to \$106.9 million on September 28, 2023. As with the applications for the SSP24 Grants, the City's application for the SSP23 Grant included a list of all the locations for which the City indicated it might seek reimbursement. That list included the Roosevelt Hotel. The award letter and amendment are annexed as Exhibits 4 and 5.

19. OMB submitted two requests for partial reimbursement under the SSP23 Grant. FEMA approved the City's first reimbursement request in the amount of \$25.5 million on July 25, 2024. FEMA approved the City's second reimbursement request in the amount of \$45.1 million on January 7, 2025. To date, the City has received \$70.6 million in reimbursement from FEMA under the SSP23 Grant. Under the grant terms, \$36.3 million remains available for claiming reimbursement of allowable costs. The approval letters are annexed as Exhibits 6 and 7.

20. In order to obtain FEMA's approval of the payments, OMB submitted to FEMA detailed proof of costs and payments, as well as the name, A-Number, and other information for each individual for whom the City's cost of providing shelter and services was included in the reimbursement request. OMB was required to include the DHS Release Date (the date DHS

released each individual from DHS custody) because, per the grant terms, FEMA would only reimburse for shelter and services provided within 45 days of release. FEMA reviewed all of this information in determining that the City's reimbursement request was for allowable costs and in determining to make the payments.

FEMA's Audit, Site Visit, and Findings Regarding the SSP23 Grant

21. On July 19, 2024, FEMA provided OMB with a letter stating that FEMA was initiating a compliance review audit of the first payment requested under the SSP23 Grant (the "Compliance Review"). The letter stated that the Compliance Review would "consist of a joint financial and programmatic site visit." A copy of the letter is annexed as Exhibit 8.

22. As part of the visit, officials from FEMA and the United States Customs and Border Protection ("CBP") toured the Roosevelt Hotel and another facility on September 9, 2024. Apart from the Compliance Review, FEMA officials also visited the Roosevelt Hotel on September 26, 2024.

23. On November 29, 2024, FEMA provided its findings to OMB by letter. FEMA made findings in three areas: data privacy protections for A- Numbers, contract provisions, and certain financial documentation inquiries. Having visited the Roosevelt Hotel, FEMA did not identify any purported gang or illegal activities there in its Compliance Review Findings. A copy of FEMA's November 29 letter is annexed as Exhibit 9.

The SSP24 Grant Awards and Payment

24. On April 24, 2024, OMB submitted an application to FEMA for an SSP-A grant for \$38,864,884.00, the maximum amount allocated to New York City at that time as set forth in the SSP-A NOFO prior to amendment. On June 11, 2024, OMB submitted an application to FEMA for an SSP-C grant for \$34,090,000, the maximum amount permitted for a single

applicant.

25. In support of the City's SSP24 applications, OMB filed on FEMA GO the required Application Worksheet and other documentation. Among other things, OMB filed a budget worksheet with detail as to the categories of costs, the rate of reimbursement sought for each cost, the number of noncitizen migrants the costs for whom the City would be seeking reimbursement, quantity of time (days) for the services, and the total cost for each line. The costs for, among other things, lodging, meals, security, case coordination, and medical supplies are each delineated separately. For example, the line item per diem cost listed for a night of hotel lodging is \$62.19. The per diem for lodging in an overnight congregate shelter facility is \$12.50. These per diem rates are applied to every hotel location at which the City anticipated requesting reimbursement under the FY24 SSP grants, without adjustment of rates to account for any differences in the actual cost to the City at each location.

26. Another tab lists each of the hotel, motel, or other facilities that the City was using for which it might claim reimbursement. For FY24, OMB listed more than 220 locations, including location name and address, at which shelter might be provided for which OMB would seek reimbursement. As with the SSP23 Grant, the Roosevelt Hotel was listed as one such location.

27. Effective July 8, 2024, FEMA awarded the City \$38,864,884.00 for the SSP-A grant. A copy of the Notice of Award is annexed as Exhibit 10.

28. On August 28, 2024, FEMA made available an additional \$20,437,241.07 to the City for the SSP-A grant via SSP-A "reserve funding." A copy of the FEMA bulletin containing this announcement is annexed as Exhibit 11. With this addition, the total for which the City was eligible to apply was increased to \$59,302,125.07.

29. On September 11, 2024, OMB amended the City's SSP-A grant application to include the additional funds, for a total application of \$59,302,125.07. FEMA approved this award effective September 11, 2024. A copy of the award is annexed as Exhibit 12.

30. FEMA awarded the City \$22,169,838.00 on the SSP-C grant. The notification of the award is dated "Effective September 17, 2024." A copy is annexed as Exhibit 13.

31. On November 27, 2024, OMB submitted amendments to the SSP-A and SSP-C awards, updating each detailed budget on FEMA GO in support of a future reimbursement request for both the SSP-A and SSP-C grants.

32. FEMA approved the City's SSP-C budget on January 8, 2025 and the SSP-A budget on January 10, 2025. That approval includes FEMA's determination that it will reimburse the City on a per diem basis for each of the various delineated costs with respect to eligible individuals.

33. On January 14, 2025, OMB submitted to FEMA its request for disbursement of the entirety of the City's allocation of \$22,169,838.00 for its Fiscal Year 2024 SSP-C grant. A copy of the letter requesting reimbursement is annexed as Exhibit 14.

34. On January 15, 2025, OMB submitted to FEMA its request for disbursement of the entirety of the City's allocation of \$59,302,125.07 for its Fiscal Year 2024 SSP-A grant. A copy of the letter requesting reimbursement is annexed as Exhibit 15.

35. Because grant funds are paid as reimbursement of expenditures previously made, the City's requests for reimbursement included documentation as required by FEMA of the expenditures that the City made that are within the grant budget and allowable under the grant terms and conditions for reimbursement. The City submitted all of the required documentation, including a detailed cost summary, proof of expenditures including invoices and proofs of

payment, and the names and A-Numbers for the exact individuals for whom the City provided shelter and services for which the City sought reimbursement under the grants.

36. On January 31, 2025, OMB received notices through FEMA GO that to receive reimbursement from FEMA, the payment request amounts for the SSP-A and SSP-C grants would need to be reduced slightly to account for an error rate of roughly 1.22% in validating the A-Numbers submitted with the payment requests. The notice for the SSP-A grant stated that OMB “may resubmit the payment request in the amount of \$58,581,446.08 to be paid out upon our receipt.” The notice for the SSP-C grant stated that OMB “may resubmit the payment request in the amount of \$21,900,415.34 to be paid out upon our receipt.” Copies of the notices are annexed as Exhibit 16. Thus, after FEMA’s review of the City’s supporting documentation, FEMA determined that nearly 99% of the City’s request met the grant terms and conditions and would be eligible for reimbursement.

37. Following receipt of the two notices, OMB on January 31, 2025, resubmitted to FEMA the payment requests for the two grants in the amounts of \$58,581,446.08 and \$21,900,415.34, respectively, as authorized by FEMA. Under the grant terms, the remaining 1.22% that was not included in the City’s reimbursement request, roughly \$1 million between the two grants, remains available for a future reimbursement request for allowable costs.

38. On February 4, 2025, the City received payments by ACH wire transfer of \$58,581,446.08 and \$21,900,415.34, the full amount that FEMA had approved for reimbursement to the City.

39. On February 7, 2025, FEMA GO provided to OMB confirmations of the payments and of FEMA’s approval of the payments. A copy of each of the February 7, 2025 payment confirmations is annexed as Exhibit 17. Disbursement of the funds is further reflected in the

FEMA GO screenshots annexed as Exhibit 18.

40. FEMA's approval and payment of the reimbursement constitutes FEMA's determination following its review of the City's detailed submissions that the amounts reimbursed were for shelter and services provided that were reimbursable under the terms and conditions of the grants. That is, FEMA approved as reimbursable the shelter and services the City provided (including every specific hotel or other location at which lodging was provided), the rates the City claimed for reimbursement, and the eligibility for reimbursement for services provided to each individual for which reimbursement was claimed.

FEMA's Money Grab

41. On Wednesday, February 12, 2025, OMB learned from the City's Department of Finance that at 4:03 pm on February 11, 2025, \$80,481,861.42 had been removed from the City's central treasury account where the funds had been deposited on February 4.

42. The amount removed constitutes the entire amount that FEMA had approved for reimbursement and disbursed to the City for the SSP-A and SSP-C grants combined.

43. Removal of the previously approved and transferred funds came as a complete surprise. FEMA did not provide any notice that the funds would be taken or that any determination had been made to take the funds or any grounds for doing so.

44. I note that the grant terms and conditions contain various provisions with respect to steps FEMA could take in the event it believes there is any noncompliance, or if it seeks to disallow expenditures, or to terminate all or part of the grants. FEMA did not take any of the steps provided in the terms and conditions before taking the funds. FEMA did not make any request to the City that it return any funds. FEMA did not provide any direct notice to the City that funding was paused or being withheld. FEMA did not provide any notice that it had any

concerns that any of the expenditures for which FEMA approved and paid reimbursement were not in compliance with the grant terms and conditions or applicable laws and regulations.

Indeed, as of the morning of February 21, 2025, FEMA continued to indicate on FEMA GO that the funds for these grants were awarded, approved, and disbursed. A copy of a screenshot with respect to each grant is annexed as Exhibit 19.

45. I note further that the federal government took back the entire amount that FEMA had approved and disbursed to the City for FY24 SSP. It took back all amounts that FEMA approved and reimbursed the City under these grants for lodging and all amounts for food, security, medical, case coordination, and any other services. It took back all amounts that FEMA approved and reimbursed the City regardless of the lodging location – every hotel, motel, shelter, congregate facility or other setting.

The “Remedy for Noncompliance” Letter

46. On February 19, 2025, OMB received a letter, dated February 18, 2025, from Acting Administrator Hamilton with the subject-line “Remedy for Noncompliance Letter, Shelter and Services Program (SSP).” A copy is annexed as Exhibit 20.

Executed on this 21st day of February 2025.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

JACQUES JIHA, Ph. D.